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## Jury Trial

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

V.

12 CR 802 (KBF)

DAVID DELVA,

Defendant.

New York, N.Y.  
September 18, 2014  
10:30 a.m.

Before:

HON. KATHERINE B. FORREST

District Judge

## APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

JUSTINA GERACI

RYAN POSCABLO  
Assistant United States Attorney

JEFFREY PITTELL

Attorney for Defendant Delva

ALSO PRESENT: JOHN REYNOLDS, Special Agent FBI  
ANNIE CHEN, Paralegal Specialist, U.S. Attorney's Office

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1 (In open court)

2 (AT 11:50 a.m. a note was received from the jury)

3 THE COURT: Ladies and gentlemen let's all be seated.

4 I have received a note from the jury. I have marked it as  
5 Court Exhibit 3. It is signed by Deirdre Moy. She dated it as  
6 11:47. We got it at 11:50.

7 It states: We cannot come to an agreement. How long  
8 should we deliberate?

9 So, here is my suggestion: It does not state whether  
10 the jury is in disagreement as to all counts or as to some, but  
11 not all counts -- nor does it suggest that they are at the  
12 point where they want to stop. So what I would suggest is that  
13 we call the jury out, and I give them the following  
14 instruction -- so I will read this twice so that you folks can  
15 hear it and then comment on it.

16 I will read the question, and then I would say:

17 There is no set length of time during which you should  
18 deliberate. Unanimity is required to return a verdict on each  
19 count, and if, after careful deliberation, you cannot reach a  
20 unanimous verdict, you should so inform the Court.

21 However, let me instruct you that if you have agreed  
22 unanimously as to some, but not all counts, even one count, you  
23 can return a verdict as to any count as to which you have  
24 reached a unanimous verdict and continue your deliberations as  
25 to the remainder.

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1                   Then I would say: You have been deliberating for  
2 about two days, and that is not an unusual length of time for  
3 you not to have an agreement. It is normal for jurors to have  
4 differences of opinion at first.

5                   The case is very important to both the defendant and  
6 the government. And if you fail to reach a verdict on one or  
7 more counts, there is some chance that the count would have to  
8 be tried again later. And there is no reason to believe that  
9 the case would be tried more exhaustively than it was here or  
10 that we would have a jury that is more conscientious than you.

11                  So, I encourage you to go back to deliberate with an  
12 open mind and to listen carefully to each other, but no juror  
13 should vote for a verdict if he or she -- if that verdict does  
14 not represent his or her view after careful deliberation.

15                  Let me read it again.

16                  I read the question. There is no set length of time  
17 for which you should deliberate. Unanimity is required to  
18 return a verdict on each count, and if, after careful  
19 deliberation, you cannot reach a unanimous verdict, you should  
20 so inform the Court. However, let me instruct you that if you  
21 have agreed unanimously as to one or more, but not all counts,  
22 you can return a verdict as to any counts as to which you have  
23 reached a unanimous verdict. You have been deliberating for  
24 about two days. That is not an unusual length of time not to  
25 have an agreement. It is normal for jurors to have differences

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Jury Trial

1 of opinion at first.

2 The case is very important both to the defendant and  
3 to the government. If you fail to reach a verdict on one or  
4 more counts, you will leave open the possibility that that  
5 count may have to be tried again, and there is no reason to  
6 believe that the case will be tried more exhaustively than it  
7 was here or that we would have a jury more conscientious than  
8 you.

9 So I encourage you to go back and deliberate with an  
10 open mind and to listen carefully to each other. No juror  
11 should vote for a verdict if it does not represent his or her  
12 view after such careful deliberation.

13 How does the government feel about that approach and  
14 that instruction?

15 MS. GERACI: Judge, we're fine with your approach on  
16 the instruction.

17 THE COURT: Thank you.

18 MR. POSCABLO: Just one thing.

19 THE COURT: Yes.

20 MR. POSCABLO: I think, your Honor, if they do return  
21 a partial verdict, we respectfully request that your Honor also  
22 say that they can no longer deliberate on the counts that  
23 they've already reached a verdict on, obviously.

24 THE COURT: I don't know if they have any verdict. I  
25 don't know if they've agreed on any count.

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Jury Trial

1 MR. POSCABLO: Correct.

2 THE COURT: If they do, then they would be instructed  
3 that their deliberations as to those counts would be  
4 terminated.

5 MR. POSCABLO: Thank you.

6 THE COURT: I can add that in. Well, let's see if  
7 they come back with a verdict on the count.

8 Mr. Pittell?

9 MR. PITTELL: Can you read it again one more time,  
10 please?

11 THE COURT: Absolutely. I read the question which is:  
12 If we cannot come to an agreement, how long should we  
13 deliberate?

14 Here is my instruction: There is no set length of  
15 time for which you should deliberate. Unanimity is required to  
16 return a verdict on each count, and if, after careful  
17 deliberation, you cannot reach a unanimous verdict, you should  
18 so inform the Court.

19 However, let me instruct you that if you have agreed  
20 unanimously as to one or more but not all counts, you can  
21 return a verdict as to any counts as to which you have reached  
22 unanimous agreement. You have been deliberating for about two  
23 days and that is not an unusual length of time. It is normal  
24 for jurors to have differences of opinion at first.

25 Now, the case is very important to both the defendant

E9iQdell

Jury Trial

1 and to the government. If you fail to reach a verdict on one  
2 or more counts, you will leave open the possibility that that  
3 count may have to be tried again, and there is no reason to  
4 believe the case will be tried more exhaustively than it was  
5 here or that we would have a jury more conscientious than you.

6 So I encourage you to go back to deliberate with an  
7 open mind and to listen carefully to each other. But no juror  
8 should vote for a verdict if it does not represent his or her  
9 view after such careful deliberation

10 MR. PITTELL: Judge, I would prefer that there is no  
11 language in there regarding the split verdicts. The question  
12 is how long should they deliberate, and the answer goes  
13 beyond -- from my perspective, the answer goes beyond just  
14 simply answering the question how long can or should they  
15 deliberate.

16 THE COURT: The question -- the reason I raised it the  
17 way I did or I put it in -- let me give you my thinking -- is  
18 that the jury has never been instructed in their initial  
19 instructions that they could return a verdict on one but not  
20 all counts. The phrase "how long should we deliberate" is as  
21 to each count individually but also as to all counts  
22 collectively. So, suggesting that if they've reached a  
23 unanimous verdict as to an individual count, their  
24 deliberations as to that count may be concluded. So that is  
25 the reason for it. It's to clarify for them the wording of

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Jury Trial

1 deliberation.

2 MR. PITTELL: My position is that I would prefer that  
3 it doesn't have the language regarding the split verdicts. I  
4 didn't write down all your language, but I think one of the  
5 sentences starts with unanimous as to one or more --

6 THE COURT: I would say partial verdict, not split.

7 MR. PITTELL: Oh, all right.

8 Unanimous as to one or more, and then there is a few  
9 more sentences, and then it starts up again "this case is very  
10 important to both sides," and then it goes into "if you fail to  
11 reach a verdict."

12 My preference would be that -- because we're still, I  
13 feel, early in the deliberations. It is eight counts. There  
14 are obviously contested questions of fact. My preference would  
15 be to leave out the language regarding partial verdict at this  
16 point, see if we get another note which indicates maybe they're  
17 deadlocked or getting close to the time when we might start  
18 talking about Allen charge if we go there.

19 THE COURT: Mr. Poscablo? Ms. Geraci?

20 MR. POSCABLO: Just one moment, Judge.

21 THE COURT: Yes.

22 MR. POSCABLO: Judge, for now I think we agree with  
23 Mr. Pittell. We can wait for another note to see where we are.

24 THE COURT: All right. So, let's just be very clear  
25 about which paragraph I am going to leave out. All right?

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1 It's one paragraph.

2 I would say: There is no set length of time for which  
3 you should deliberate. Unanimity is required. I would then  
4 after that say: You've been deliberating for about two days  
5 and continue and go into the remainder. But I would not say  
6 the paragraph that began "however, let me instruct you that if  
7 you've agreed unanimously as to one or more but not all counts,  
8 you can return a verdict to that one which you have agreed  
9 unanimously."

10 MR. POSCABLO: Judge, can I have a moment? Can I take  
11 two minutes to make a telephone call?

12 THE COURT: Yes. Why don't you folks confer let me  
13 come back out here in just a moment, OK?

14 MR. POSCABLO: All right. Your Honor.

15 (Recess)

16 THE COURT: Ladies and gentlemen, let's be seated.  
17 Have people had an opportunity to think further about this?

18 MS. GERACI: Yes, your Honor. The government has two  
19 thoughts on your Honor's proposed language. First, with  
20 respect to the language that your Honor has proposed to take  
21 out, we do believe that it is appropriate for several reasons.  
22 We believe the Court should note, in fact, they only have been  
23 deliberating for really a short time. In fact, they only  
24 started deliberating around 11:30 yesterday morning or so,  
25 around that time. It really hasn't been two days. We would

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1 request that your Honor note a case of this nature and of the  
2 counts that just about a day of deliberation is not terribly a  
3 long amount of time.

4                 Secondly, Judge, we would ask for the partial verdict  
5 language that your Honor has suggested with the addition of  
6 noting that this is one option for them, and that it is  
7 entirely at their discretion but you are simply informing them  
8 it is an option. And we believe that it is sort of needed  
9 because of the ambiguity in their question. That's why we are  
10 suggesting to proceed this way

11                 THE COURT: All right. Let me just make a note. Then  
12 I want to hear from Mr. Pittell.

13                 Mr. Pittell.

14                 MR. PITTELL: My position remains the same.

15                 THE COURT: How about on the -- I think there are  
16 actually two pieces at issue now. One of them may be  
17 relatively easy, which is, I think Ms. Geraci makes a good  
18 point; that the deliberations really commenced when --  
19 yesterday at 11:30, almost exactly when Juror No. 7, alternate  
20 number one replaced Juror No. 7. It wasn't quite 11:30, but it  
21 was late morning, let's say. I don't think we need to give an  
22 hour. So it's not two days. It's one day. So I would make  
23 that change and say you've only been deliberating for one day,  
24 for 24 hours.

25                 MR. PITTELL: I agree with that.

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Jury Trial

1                   THE COURT: And then the other point would be the  
2 partial verdict where you still disagree.

3                   MR. PITTELL: Right. In fact, the fact that they  
4 really only have been deliberating for one day as opposed to  
5 two days really sort of strengthens my argument or further  
6 supports the reasons why I earlier stated why I think it is  
7 premature to start instructing them about partial verdicts.

8                   THE COURT: Do you think that there is any case law or  
9 other legal reason why the Court could not in its discretion if  
10 I interpret the question, as I had previewed for you folks  
11 beforehand, in the manner that as suggested by Ms. Geraci is  
12 also suggested, the word deliberations is sort of open; that I  
13 couldn't provide the partial instruction language?

14                  MR. PITTELL: I mean, you're asking me to really  
15 speculate.

16                  THE COURT: I'm just wondering if you know of, for  
17 instance --

18                  MR. PITTELL: I don't know of -- as I stand here right  
19 now, I can't tell of any authority regarding the Court's  
20 discretion on the interpretation of language in a note.

21                  My impression on the language of the note is I don't  
22 think it is so ambiguous. It asks -- I guess they're asking is  
23 there a time limit by which we have to reach a verdict? Do we  
24 have to reach a verdict within two days or three days? Is  
25 there a set limit?

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Jury Trial

1                   THE COURT: So let me also, I think we clearly, we can  
2 all agree they're not asking it because they're anticipating at  
3 some future point not being able to reach an agreement.  
4 They're feeling the lack of agreement right now which is what  
5 has inspired the question.

6                   I am speculating as to their state of mind, but I  
7 think it is a rather educated guess given that jurors tend to  
8 write questions when they have the question actively in their  
9 mind. So it's based upon experience in that manner.

10                  But let me ask you, do you know of any cases where the  
11 court's instruction as to partial verdicts has resulted in  
12 reversible error because it was given too soon? I do no, but I  
13 do want to find out if you are aware of anything.

14                  MR. PITTELL: As I stand here, no.

15                  THE COURT: Here is what I would suggest we do. I  
16 think it would be useful to tell them but to add in some  
17 additional language. Let me tell you the additional language:

18                  However, let me instruct you that as one option for  
19 you, which you may, but need not, exercise in your discretion  
20 is: If you have agreed unanimously as to one or more, but not  
21 all counts, you can return a verdict as to any count as to  
22 those -- as to such counts, and you would then continue your  
23 deliberations as to the remainder.

24                  However, I should also tell you that if you did return  
25 a verdict as to certain counts, your deliberations as to those

E9iQdell

Jury Trial

1 counts would be completed.

2 So they've got two additional items in there that they  
3 did not have in the prior version. One is an option that they  
4 can exercise or not in their discretion.

5 And, secondly, that they should understand that if  
6 they do return a verdict as to one or more counts, their  
7 deliberations as to those counts are completed so that they  
8 don't later think that they had an opportunity to go back. It  
9 then is foreclosed.

10 All right. Is there any additional argument folks  
11 would like to have on that language? I think the folks'  
12 positions are then on the record.

13 Let's go ahead and bring out the jury. Is the full  
14 jury in there? Let's go ahead and bring them out.

15 (Jury present)

16 THE COURT: Ladies and gentlemen, let's all be seated.

17 The Court has received a note from the jury, which I  
18 have marked as Court Exhibit 3. It is signed by Ms. Moy. It  
19 was -- the time is noted at 11:47. The Court received it about  
20 11:50.

21 The note reads as follows: If we cannot come to an  
22 agreement, how long should we deliberate?

23 Let me give you folks the following instruction:

24 There is no set length of time during which you should  
25 deliberate or for which you should deliberate. Unanimity is

E9iQdell

Jury Trial

1 required to return a verdict on each count, and, if after  
2 careful deliberation, you can't reach a unanimous verdict, you  
3 should so inform the Court.

4                   However, let me instruct you that one option for you  
5 which you can choose to exercise or not in your discretion is  
6 that if you agreed unanimously as to one, but not all, counts,  
7 you can return a verdict as to any count as to which you have  
8 reached unanimous agreement. You would then continue your  
9 deliberations with respect to the remainder. However, your  
10 deliberations would be completed as to any counts for which you  
11 returned a unanimous verdict.

12                  Now, you've been deliberating for about one day. I  
13 know what's occurred over the course of two days and a little  
14 bit, but we timed it from when alternate No. 1 came and became  
15 Juror No. 7, and you were instructed to start from scratch.  
16 That is not an unusual length of time for deliberations for a  
17 series of counts such as those before you. It is normal for  
18 jurors to have difference of opinion at first.

19                  I, of course, want to just remind you that the case is  
20 important to both the defendant and to the government. If you  
21 fail to reach a verdict on one or more counts, you will leave  
22 open the possibility that that count may have to be tried  
23 again, and there is no reason to believe that this case will be  
24 tried more exhaustively than it was here or that we would have  
25 a jury more conscientious than you are.

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Jury Trial

1                   So I encourage you to go back and to deliberate with  
2 an open mind, to listen carefully to each other, but no juror  
3 should vote for a verdict if it does not represent his or her  
4 view after such careful deliberation.

5                   All right? You may return to the jury room, ladies  
6 and gentlemen. Thank you.

7                   (Jury deliberations resumed; time noted 12:40 p.m.)

8                   THE COURT: Let's be seated. I want to make sure that  
9 since we know there is very likely some disagreement as to all  
10 counts or one or more counts, that we give you folks sort of  
11 the obvious chance to think about a couple of things:

12                  (1) If the jury does return a partial verdict, what  
13 language you want the Court to state around that partial  
14 verdict, if you have any particular language. The Court would,  
15 of course, instruct the jury that their deliberations on those  
16 counts are now completed, and they should go back and continue  
17 to deliberate as to the remaining counts.

18                  The other possibility is we get another note  
19 relatively shortly or in several hours or tomorrow, whenever it  
20 is, that they are still unable to reach agreement, and they do  
21 not return a partial verdict. At that point, if there is  
22 additional language which you think could be appropriately  
23 given, you can provide it.

24                  The Court hasn't looked through Second Circuit case  
25 law on these kinds of issues. I'm sure you're all familiar

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Jury Trial

1 with the same case, the *Vargas* -- there are certain cases which  
2 go to the edge of certain cases which aren't as close to an  
3 outer edge, but there are cases which show you, I think,  
4 effectively how far you can go, and you folks could, if you  
5 want to, come up with additional language. What we've just  
6 given is a type of charge, but there is additional maneuvering  
7 room, I think, from the Court's perspective, on the law.

8 The last issue that you folks can think about is if  
9 they come back and either after an additional charge, modified  
10 Allen-type charge, remain deadlocked, if there is any  
11 particular language you would want at that point around the  
12 declaration of a mistrial.

13 So, let's have you folks begin to think about those  
14 since you have a little bit of time. I think those are three  
15 potential scenarios as well as questions on the evidence or  
16 verdict on everything. All right?

17 Is there anything you folks would like to raise with  
18 me right now?

19 MS. GERACI: No, your Honor.

20 MR. PITTELL: Judge, I received your order regarding  
21 my letter. I want to at least -- I'll be brief -- put on the  
22 record why I sent the letter last night. I got the transcript  
23 from the reporter. I you know read over the transcript the way  
24 I do. When I reached to that point, I read the instruction, I  
25 played the recording again, I know that we discussed it, and

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Jury Trial

1 then we heard from the jury; but when I listened to it  
2 collectively a third time, I kind of got the sense that the  
3 jury was questioning whether from their note and their request  
4 for that recording that they felt that Mr. Delva was not  
5 initially present, but then by making -- as in the recording  
6 telling Mr. Accilien not to say anything, not to write  
7 anything, could that be joined in the conspiracy in progress.  
8 That's what prompted me to at least write the letter to the  
9 Court and to request clarification.

10 THE COURT: All right. As you know from my order this  
11 morning, I denied the application.

12 MR. PITTELL: Right.

13 THE COURT: Let me just state some additional  
14 reasoning as to why. In my experience, the fact that two  
15 questions appear on a jury note does not necessarily mean that  
16 one is a predicate to the second. I don't make those kinds of  
17 assumptions unless there is a specific language connection  
18 between the two. Therefore, I did not make an assumption --  
19 and I think it would be inappropriate to have done so -- that  
20 the request relating to replaying Government Exhibit 800 was  
21 necessarily linked to the second question.

22 In my view, the second question was a question about  
23 what progress meant. That's really exactly what it said. And  
24 I think that by re-reading what was an agreed-upon instruction  
25 in terms of the language as to what progress means, but also in

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Jury Trial

1 the course of you adding to that the need for the jurors to  
2 come to some sort of resolution of joining, I think that I put  
3 in place certain protections around just telling them that any  
4 conduct during progress would be conspiratorial.

5 In addition to that -- I had another point. Let me  
6 just think. It slipped my mind.

7 MR. PITTELL: I know what the point is going to be  
8 because you added the language about the government's theory.

9 THE COURT: No, I'm sorry. My point -- no, that  
10 language was agreed because you wanted to make sure that if  
11 their belief was that it was a later joinder. So that was  
12 agreed language.

13 My point was to have answered the question as you had  
14 suggested, which was the word "no," would have been, in the  
15 Court's view, making a factual finding, and that would have  
16 been inappropriate. So the Court is obviously not going to  
17 make that factual finding, but simply instruct them as to what  
18 the law is on progress and joining a conspiracy. I think that  
19 properly fully sets forth my thought as well as yours.

20 I hadn't received anything from the government. So,  
21 if the government had a view on that which suggested that I  
22 should have gone with what Mr. Pittell is suggesting, then  
23 obviously it would be important to know.

24 MS. GERACI: We agree with your Honor.

25 THE COURT: Let's take our break now until we get our

E9iQdell

Jury Trial

1 next note from the jury. I would ask you folks to think about  
2 these three scenarios so we could save some time, and you folks  
3 will have an opportunity to put your thoughts down in advance.

4 MR. PITTELL: Is the jury -- now that they've taken a  
5 lunch break, have they stopped deliberating?

6 THE COURT: Their lunch has been delivered up to them.  
7 It's up to them to decide if they want to take some time to  
8 walk around, but there is no set time. It's my practice not to  
9 set a time for a break because they sometimes prefer to  
10 deliberate until they're done.

11 MR. PITTELL: Thank you.

12 THE COURT: All right. Thank you.

13 (Recess pending verdict)

14 (Jury not present)

15 THE COURT: Ladies and gentlemen, let's all be seated.

16 I have received a note from the jury. I've marked it  
17 as Court Exhibit 4. It will be available for inspection.

18 I received it as 1:05, which was shortly after it came  
19 to us, very shortly after. There is no time indicated by  
20 Ms. Moy who signed it.

21 It states: We would like to hear the testimony  
22 Gregory Accilien provided as a result of the prosecution's  
23 questioning regarding David Delva's involvement in the  
24 kidnapping of Jeanette Adams and/or Patrick James.

25 So, let me read this again. Then I will leave it for

E9iQdell

Jury Trial

1 you folks to go through.

2 We would like to hear the testimony Gregory Accilien  
3 provided as a result of the prosecution's questioning regarding  
4 David Delva's involvement in the kidnapping of Jeanette Adams  
5 and/or Patrick James.

6 So let me leave this for you folks to try to come up  
7 with the right prosecution questioning in that regard; and if  
8 you have disagreements, let my deputy know. He will bring me  
9 out.

10 If you are in agreement, then send in a copy of the  
11 transcript that you are planning on or pieces of the transcript  
12 that you are planning on sending in, and then we will call the  
13 jury out. As quickly as you can.

14 MR. POSCABLO: Thank you, your Honor.

15 (Recess)

16 (Jury not present)

17 THE COURT: Counsel, why don't you hand up what you've  
18 got. We got this over an hour ago, an hour and 25 minutes ago,  
19 and I'm interested in getting the jury answers.

20 Now, I need the transcript pieces. Do you have the  
21 transcript marked someplace?

22 MR. POSCABLO: We have a way to print it, Judge.

23 THE COURT: I can look at each and every one of  
24 these -- I will now have to look each and every one of these  
25 up.

E9iQdell

Jury Trial

1                   MR. PITTELL: Judge, a good portion of the time the  
2 government was going through it, they gave me a list. I have  
3 been going through the list. I have gone through all the  
4 direct. There are 14 sections that they marked. I have  
5 objection to -- two of them I have no objections. The other  
6 ones I have objections. I'm writing down my exceptions. A lot  
7 of them describe conduct by Mr. Accilien. They don't describe  
8 Mr. Delva's conduct. Those are my objections.

9                   THE COURT: Which ones are those that are not related  
10 to Mr. Delva?

11                   MR. PITTELL: All the ones that I have exceptions to.

12                   THE COURT: So tell me what they are. I am about to  
13 go through them. I am going to get the jury an answer whether  
14 I have to go through the transcript myself. It has now been an  
15 hour and 30 minutes.

16                   MR. PITTELL: The first one page 102/lines 21 to 25.

17                   THE COURT: Do the next one. I will look at all of  
18 them and see where it stops talking about Mr. Delva.

19                   Do you have an exception on 103 page.

20                   MR. PITTELL: All of it except lines 8 through 10.

21                   112 page/line 16 through 21, objection to all of it.

22                   The next one starts at 131/line 7 goes through  
23 131/line 3. Objection to all of it except the following:  
24 132/line 10 through 15. 132/line 24 through 25. 133/line 1  
25 through 2. 133/line 17 through page 134/line 9.

E9iQdell

Jury Trial

1 Tell me if I'm going too fast.

2 THE COURT: No. If the court reporter can follow you,  
3 then we're OK.

4 MR. PITTELL: Page 134/line 18 through 24. Page  
5 135/line 6 through 9. Page 138/line 2 through 8.

6 The next one is 139/line 10 through page 140/line 8.  
7 I have objections to all that except for page 139/lines 10  
8 through 13.

9 THE COURT: Next.

10 MR. PITTELL: The next is 140/line 22 through 25. I  
11 object to all of that.

12 The next one is page 141/lines 1 through 15, all of  
13 it -- well, I don't object to lines 5 through 15.

14 THE COURT: Next.

15 MR. PITTELL: The next one page 142, that's all OK.

16 THE COURT: OK.

17 MR. PITTELL: Page 143/line 1 through 13, and then 18  
18 through 25, objection to all of that.

19 Then it says 144, all. I have objection to all except  
20 lines 8 through 11 and 16 through 25.

21 THE COURT: All right. Next.

22 MR. PITTELL: The next one says 145, all.

23 THE COURT: Yes.

24 MR. PITTELL: I have objection to all except for lines  
25 1 through 8 and 12 through 24.

E9iQdell

Jury Trial

1                   THE COURT: OK.

2                   MR. PITTELL: The next one is line 146 -- I'm sorry --  
3 page 146/lines 1 through 20. I have objection to lines 1  
4 through 11.

5                   And the last page 147/7 through 16, I don't have  
6 objections to.

7                   I haven't gone through the redirect yet. There are  
8 five items.

9                   THE COURT: Did you have yourself any other testimony  
10 that you believe should be included apart from that which you  
11 asked to have excluded.

12                  MR. PITTELL: No.

13                  THE COURT: I will look at this. You will look at the  
14 redirect. I will come out in another five to ten minutes, and  
15 we'll resolve.

16                  MR. PITTELL: Thank you.

17                  THE COURT: All right.

18                  (Recess)

19                  THE COURT: Let's all be seated. We will go through  
20 some of it, and I am going to go through the rest of it while  
21 you are sitting here. I have reviewed what the government had  
22 provided in handwritten form which I will recite. Mr. Pittell  
23 has already put forward his objections on the direct that was  
24 proposed by the government, and I understand that, Mr. Pittell,  
25 you object to the entirety of the redirect that's been

E9iQdell

Jury Trial

1 designated or proposed.

2 MR. PITTELL: Right.

3 THE COURT: Here are my rulings up through pages -- up  
4 to page 139. And I will then go through the rest of it with  
5 you right here because I want you folks to start preparing it.

6 Page 102/line 21 through 25 was proposed by the  
7 government. I agree with that proposal for the following  
8 reasons: It is Mr. Accilien being arrested for robbery and  
9 kidnapping which he then on page 103/lines 1 through 21, also  
10 proposed by the government, then connects to his identification  
11 of Mr. Delva as a participant in those events. So that is  
12 obviously laying the groundwork for exactly what the jury had  
13 asked for.

14 Page 112/16 to 21 is, again, directly talking about  
15 the events here and goes into what the jury had asked for. Let  
16 me get you exactly the content. It's 16 to 21. Yes, this is  
17 exactly responsive. It's Mr. Accilien talking about Mr. Delva  
18 being involved in his statement to the government in that  
19 regard.

20 Page 131/lines 7 through 25 through 139/line 3. That  
21 is, in fact, the heart of everything. That is the entirety of  
22 the period of time when Mr. Accilien is talking about precisely  
23 what happened in the apartment over that period of time during  
24 the period of time when Mr. Accilien and Mr. Delva went out,  
25 went back, when Mr. Delva returned, then when Mr. Accilien

E9iQdell

Jury Trial

1 returned, the state of the apartment at that time. So all of  
2 that is OK and the government should begin preparing it. Let  
3 me go through the remainder. I am going to do that right now.

4 MR. POSCABLO: Judge, did you talk about page 113?

5 THE COURT: I don't have 113 on my list. I have  
6 112/lines 16 through 21.

7 MR. POSCABLO: You're right, Judge. I apologize.

8 THE COURT: All right. Page 139/lines 10 through  
9 140/line 8, and page 140/line 22 through 25 as proposed by the  
10 government. Those are, in fact, directly responsive. Again,  
11 it is what was going on inside the apartment at a time when  
12 Mr. Accilien is testifying that Mr. Delva was present.

13 Also for page 140/line 1 through 15, 142/lines 13  
14 through 17 and 20 through 22, those are again directly  
15 responsive, all of those lines, to what was occurring in the  
16 apartment and Mr. Delva's actions in part in regard thereto,  
17 but all of it is exactly what was happening with respect to the  
18 kidnapping and robbery when Mr. Delva was alleged to be  
19 present.

20 MS. GERACI: Judge, could you give us those lines one  
21 more time?

22 MR. POSCABLO: I have them.

23 THE COURT: 142/13 through 17 and 20 through 22.

24 MS. GERACI: Thank you, your Honor.

25 THE COURT: 143/lines 1 through 13 and 18 through 25 I

E9iQdell

Jury Trial

1 also find directly responsive. There is a question at first  
2 why 1 through 13 would be part of it, but then when you combine  
3 lines 1 through 13 with 18 through 25, it's the necessary  
4 background to the communication with Mr. Delva regarding  
5 Mr. Accilien leaving the apartment and leaving Mr. Delva  
6 behind. So it again explains a key piece of Mr. Delva's  
7 alleged presence.

8 Page 144 -- all of it is Mr. Accilien testifying as to  
9 leaving the apartment, going to his own apartment but then  
10 Mr. Delva allegedly appearing with some of the belongings of  
11 the victims which would go directly to the robbery, among other  
12 things. So that is responsive.

13 Page 145 -- Mr. Accilien's testimony regarding  
14 Mr. Delva's description as to what occurred in the apartment  
15 when Mr. Accilien was not there. That is directly responsive.

16 Page 146/lines 1 through 20 are again Mr. Accilien's  
17 statements in a conversation with Mr. Delva directly relating  
18 to the items which he had taken from the apartment. He alleged  
19 -- he being Mr. Delva -- as well as the car. That is direct  
20 testimony relevant to robbery.

21 Page 147 line 7 through 16 is also directly  
22 responsive. It is a payment made to Mr. Delva for his  
23 participation in the robbery and kidnapping.

24 Let me have, if I could, please, the transcript  
25 relating to the redirect.

E9iQdell

Jury Trial

1                   All of those should go in, and the government should  
2 begin preparing that material. The objections are overruled.

3                   MR. POSCABLO: Thank you, your Honor.

4                   THE COURT: Page 448/lines 24, 25 and 449/lines 1  
5 through 6, 14, 17 and 18 are also directly responsive as to  
6 Mr. Accilien's reasons for bringing Mr. Delva along into the  
7 apartment. It is a fuller explanation what of he had said on  
8 direct and similarly responsive.

9                   450/lines 3 through 6 and 23 through 25 is again  
10 explanation in the same regard.

11                   Page 456/line 20 to 23 is also directly responsive.  
12 The jury's question relates to Mr. Delva's involvement in the  
13 kidnapping. That testimony that is designated at page 456  
14 relates to whether or not Mr. Accilien had any awareness of Mr.  
15 Delva being at the West Indian day parade in September of 2012,  
16 and his statement that he was not to his knowledge is probative  
17 of involvement of the kidnapping because the reasonable  
18 inference is that you could not be two places at once. So,  
19 therefore, it goes to the question of involvement.

20                   Page 457/lines 20 through 24 is also directly  
21 responsive because it is indicating that Mr. Delva was  
22 participating in the robbery and kidnapping, and, therefore,  
23 directly responsive to the jury's question of involvement as  
24 well as involvement insofar as it references Mr. Delva hitting  
25 the victim.

E9iQdell

Jury Trial

1                   So those objections are overruled

2                   MR. POSCABLO: Judge, we've prepared the transcript,  
3 we are just going to run downstairs and print it out. It  
4 should take us about five minutes.

5                   THE COURT: Mr. Pittell, is there anything you would  
6 like to add on to the record apart from your objections?  
7 They're noted for the record. I've overruled them, but I am  
8 about to take another break, and I want to be sure you have an  
9 opportunity to put forth on the record whatever you would like.

10                  MR. PITTELL: No, your Honor. Thank you. I think my  
11 objections are noted.

12                  THE COURT: All right.

13                  MR. PITTELL: Just so the record is clear, I said I  
14 objected to all the redirect. It was the pages that you said  
15 were in starting at 448 going through 457, those series of  
16 pages.

17                  THE COURT: Yes. When the government has transcripts,  
18 let's get it back out here.

19                  MR. PITTELL: We are giving two copies to the jury.

20                  THE COURT: Yes, I'll do what I did before. Call them  
21 out. Read them the question, say we prepared some transcripts  
22 and hand it to them. That's it.

23                  (Recess)

24                  THE COURT: Let's bring out the jury.

25                  (Jury present)

E9iQdell

Jury Trial

1                   THE COURT: Ladies and gentlemen, let's all be seated.  
2 I received a note from the jury. The note was received at  
3 1:05. I apologize for how long it's taken us to get it  
4 together, but you'll see that we have collected the information  
5 and are ready to hand it to you.

6                   The note states -- it was marked as Court Exhibit 4 --  
7 we would like to hear the testimony Gregory Accilien provided  
8 as a result of the prosecution's questioning regarding David  
9 Delva's involvement in the kidnapping of Jeanette Adams and/or  
10 Patrick James.

11                  So, we have prepared some copies, all of which are  
12 identical, of Mr. Accilien's direct and redirect examination.  
13 If there is anything else that you think you want in that  
14 regard, you should let us know. But this is the direct and  
15 redirect examination in that regard. My deputy will hand it to  
16 Ms. Moy. Thank you, ladies and gentlemen. You may return to  
17 the jury room.

18                  (Jury deliberations resumed at 3:15 p.m.)

19                  THE COURT: All right. Ladies and gentlemen, is there  
20 anything else we should do before we take a break until we get  
21 another note from the jury?

22                  MR. POSCABLO: No, your Honor.

23                  THE COURT: Mr. Pittell?

24                  MR. PITTELL: No.

25                  THE COURT: All right. Thank you.

E9iQdell

Jury Trial

1 (Recess pending verdict)

2 (Jury not present)

3 THE COURT: Ladies and gentlemen, why don't we all be  
4 seated?

5 I've received a note from the jury, which I will mark  
6 as Court Exhibit 5. It says: We have a decision, is what it  
7 says. We have a decision. Signed by Deirdre Moy received at  
8 4:20.

9 Because of our back and forth earlier today, my plan  
10 is when they come out here, first to ask the foreperson if  
11 they, in fact, have reached a verdict on each of the eight  
12 counts. I want to know what I think it is they are giving to  
13 me. At that point, if the answer is yes, we will go through  
14 our normal process. Is there any objection to that?

15 MR. POSCABLO: None from the government, your Honor.

16 MR. PITTELL: No.

17 THE COURT: Let's bring out the jury.

18 (Jury present)

19 THE COURT: Ladies and gentlemen, let's all be seated.

20 I have received a note from the jury. I have marked  
21 it as Court Exhibit 5. It was received on today's date at  
22 4:30 p.m. It's timed 4:20 from Ms. Moy. It states: We have a  
23 decision.

24 Madam foreperson, has the jury reached a verdict on  
25 each of the eight counts?

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1                   JUROR: Yes.

2                   THE COURT: Would you please hand the verdict sheet to  
3 my deputy? I am going to ask my deputy to read the verdict.

4                   THE DEPUTY CLERK: The jury's verdict in the matter  
5 United States of America v. David Delva, 12 CR 082:

6                   Count One: Robbery conspiracy. How do you find the  
7 defendant, David Delva, with respect to Count One, conspiracy  
8 to commit robbery? Guilty.

9                   Count Two: Robbery. How do you find the defendant,  
10 David Delva, with respect to Count Two robbery? Not guilty.

11                  Count Three: Kidnapping conspiracy. How do you find  
12 the defendant, David Delva, with respect to Count Three,  
13 conspiracy to kidnap? Guilty.

14                  Count Four: Kidnapping. How do you find the  
15 defendant, David Delva, with respect to Count Four, kidnapping?  
16 Not guilty.

17                  Count Five: Use of firearms. How do you find the  
18 defendant, David Delva, with respect to Count Five use of  
19 firearms during and in relation to crimes of violence? Not  
20 guilty.

21                  Count Six: Narcotics distribution conspiracy. How do  
22 you find the defendant, David Delva, with respect to Count Six,  
23 conspiracy to distribute or possess with intent to distribute  
24 controlled substances? Guilty.

25                  Did you unanimously find beyond a reasonable doubt

E9iQdell

1 that the defendant conspired to distribute or possess with the  
2 intent to distribute cocaine base in a form commonly known as  
3 crack? Yes.

4 Marijuana. Do you unanimously find beyond a  
5 reasonable doubt that the defendant conspired to distribute or  
6 possess with intent to distribute marijuana? Yes.

7 Count Seven: Use of firearms. How do you find the  
8 defendant, David Delva, with respect to Count Seven, use of a  
9 firearm during and in relation to a drug-trafficking crime?  
10 Guilty.

11 Count Eight: Possession of a firearm by a felon. How  
12 do you find the defendant, David Delva, with respect to Count  
13 Eight, unlawful possession of a firearm by a felon? Guilty.

14 Madam foreperson, is this the jury's verdict?

15 JUROR: (Nods yes)

16 THE COURT: Poll the jury.

17 (Jury polled; each juror answered in the affirmative)

18 THE DEPUTY CLERK: The jury is polled.

19 THE COURT: Counsel, is there any reason for the Court  
20 not to discharge the jury at this time?

21 MS. GERACI: No, your Honor.

22 MR. PITTELL: No.

23 THE COURT: Ladies and gentlemen, I want to thank you  
24 for performing your jury service with such diligence and over  
25 what I know is a long period of time in terms of taking out of

E9iQdell

1 your life.

2 As I said at the very beginning, our system of law  
3 requires that citizens like you dedicate their time and their  
4 conscientious attention to performing a jury service or our  
5 system of law doesn't work. So I want to thank you for  
6 undertaking this jury service.

7 I also want to thank you for the care and attention  
8 which you folks have given to this trial. I can tell from your  
9 notes and from the attention that you folks were paying during  
10 the trial that you were paying attention to the evidence, and  
11 that was obvious throughout.

12 I had repeatedly reminded you about your obligation of  
13 silence with respect to this case. Now that your jury service  
14 is completed, I now release you from that obligation of  
15 silence, and you may now talk about this case should you choose  
16 to do so. However, you need not talk about this case. Whether  
17 you do or not is entirely up to you. So if you get a phone  
18 call from someone who wants to talk to you about this case. If  
19 you don't want to talk about it, you are absolutely -- it's  
20 fine for you to say I don't want to talk about it and not  
21 discuss it.

22 If you choose to talk about this case, I ask that you  
23 respect the opinions of your fellow jurors and let them speak  
24 about their own opinions and that you if you are going to speak  
25 about the case, speak just about what your views of the case

E9iQdell

1 were and not speak for each other.

2 Again, thank you. Joe has, I think, some final  
3 instructions for you. He can talk to you again now, and he  
4 will see you out in the jury room. You are dismissed. Thank  
5 you.

6 (Jury discharged)

7 THE COURT: All right, ladies and gentlemen. Let's  
8 all be seated.

9 The verdict form will be marked as Court Exhibit 5.  
10 As I said, and it will go on to the dockets available here for  
11 inspection.

12 Are there any applications?

13 MR. POSCABLO: None from the government, your Honor.

14 MR. PITTELL: Judge, I was wondering if you could give  
15 me additional time to file any post trial motions. I would  
16 normally ask for 30 days, but given I'm starting a lengthy  
17 trial Monday, I would ask the Court consider giving me 60 days.

18 THE COURT: I don't think that that is an unreasonable  
19 request. Mr. Poscablo and Ms. Geraci, do you have any issue  
20 with that?

21 MR. POSCABLO: No objection to that.

22 THE COURT: The Court will put the date for post trial  
23 motions. Today's date is the 18th. So why don't we say the  
24 21st of November?

25 MR. PITTELL: That's fine. Thank you.

E9iQdell

1                   THE COURT: So 11/21. Today is also -- since it's  
2 9/18, let's set the sentencing date for December 18. Are you  
3 going to be off trial by then, Mr. Pittell?

4                   MR. PITTELL: I will, but, I mean, realistically I  
5 don't know if I am going to be able to attend the presentence  
6 interview.

7                   THE COURT: We can speak after the first of the year.  
8 You may not have time to do your reply to the post trial  
9 motions. Given they're coming in 60 days, I realize I need to  
10 give it a little bit more time. We have 11/21. Why don't we  
11 put the government's response to post trial motion would 12/11  
12 work?

13                   MR. POSCABLO: Yes, your Honor that would be great.

14                   THE COURT: So December 11. And then Mr. Pittell,  
15 before Christmas, say, 12/22 for the full brief post trial?

16                   MR. PITTELL: That's fine.

17                   THE COURT: Then we'll put the sentencing into  
18 January. For a January date, I will need to talk to my deputy  
19 because I have some other things in January. I happen to know  
20 the 18th of December was open. But for January I will issue an  
21 order.

22                   Anything further we should do this afternoon, counsel?

23                   MR. POSCABLO: No, your Honor.

24                   MR. PITTELL: Nothing from us.

25                   THE COURT: Thank you. The verdict form is up here

E9iQdell

1 for inspection, but please leave it behind, it will be posted  
2 on the docket if you want to look at it. Thank you.

3 We are adjourned.

4 (Trial concluded)

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